

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 1, 2004

IN RE:

**BELLSOUTH'S MOTION FOR THE
ESTABLISHMENT OF A NEW
PERFORMANCE ASSURANCE PLAN**

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**DOCKET NO.
04-00150**

ORDER HOLDING DOCKET IN ABEYANCE

This matter came before Director Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on June 7, 2004, to consider the *Motion of BellSouth Telecommunications, Inc. for the Establishment of a New Performance Assurance Plan* (the "*Motion*").

Background

TRA Docket No. 97-00309

On August 7, 2002, the panel assigned in TRA Docket No. 97-00309 convened the final Hearing in that docket for the purpose of determining the compliance of BellSouth Telecommunications, Inc. ("BellSouth") with the criteria and procedures set forth in the Federal Telecommunications Act of 1996 for entry into the in-region long distance (interLATA) markets in Tennessee. At that time, the Hearing Officer in that docket informed the panel that the parties had reached a proposed Settlement Agreement. The parties then presented to the panel a summary of the Settlement Agreement and an explanation regarding how it affected Docket No.

97-00309 and two other dockets: Docket No. 01-00362¹ (the OSS Docket) and Docket No 01-00193 (the Performance Measurements Docket).² The parties also informed the panel that a number of the parties in Docket No. 97-00309 had agreed to the Settlement Agreement, and those parties that did not join in the Settlement Agreement had either withdrawn from the proceedings or concurred in the parties' agreement to submit the case to the panel for a decision based on the current record without conducting the previously scheduled evidentiary Hearing.

BellSouth summarized the Settlement Agreement as follows: With regard to Docket No. 97-00309, the parties proposed that the record should be closed as of July 31, 2002 and the case be submitted to the Directors for deliberations based on that record. The parties agreed that no additional testimony, argument, briefs or opposition would be filed in the docket. The parties requested that the panel publicly deliberate Docket No. 97-00309 on August 26, 2002.

After considering the parties' statements, the panel in Docket No. 97-00309 unanimously voted to approve the Settlement Agreement on the condition that the panels in Docket No. 01-00362 and Docket No. 01-00193 accepted and approved those portions of the Settlement Agreement affecting those respective dockets. Shortly thereafter, the panels in Docket No. 01-00193 and Docket No. 01-00362 convened and each voted unanimously to accept the Settlement Agreement.

After ascertaining that the respective panels in Docket No. 01-00193 and Docket No. 01-00362 had voted to accept the Settlement Agreement, the panel in Docket No. 97-00309 voted unanimously to accept the Settlement Agreement. The *Order Approving Settlement Agreement* in Docket No. 97-00309 memorializing these decisions was issued on August 29, 2002. The panel reconvened on August 26, 2002 and deliberated the merits of the issues raised in that

¹ *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc 's Operations Support Systems with State and Federal Regulations*, Docket No 01-00362

² *In re Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc* , Docket No 01-00193

docket. The findings were reflected in the TRA's comments to the Federal Communications Commission ("FCC") filed on October 10, 2002.

The Adoption of the Original Performance Assurance Plan

During the Authority Conference held on August 7, 2002, the panel assigned to TRA Docket No. 01-00193 heard from the parties who requested that the Authority adopt, as the Tennessee Performance Assurance Plan, the service quality measurements ("SQMs") and self-effectuating enforcement mechanisms ("SEEMs") adopted by the Florida Public Service Commission on February 14, 2002. The parties agreed not to seek amendments to the plan until December 1, 2003, after which the TRA at its discretion may conduct a review of the plan and the parties are free to recommend modifications. The parties agreed that in the interim, prior to December 1, 2002, BellSouth would implement the Georgia Performance Plan and self-effectuating enforcement mechanisms. The parties also proposed that the TRA adopt the Tennessee performance measurements for special access. The parties agreed that should the FCC implement national standards, no party would be estopped from requesting that the TRA adopt the FCC standards.

After hearing from the parties, the panel in TRA Docket No. 01-00193 unanimously voted to accept those portions of the Settlement Agreement affecting that docket. The TRA confirmed that the service quality measurement plan and self-effectuating enforcement mechanisms adopted by the Florida Public Service Commission in Docket No. 000121-TP on February 14, 2002, as they existed and may be modified in the future, be adopted, and implemented no later than December 1, 2002 and remain in effect, at a minimum, until December 1, 2003. The Authority issued its Order reflecting the Tennessee Performance Assurance Plan on October 4, 2002 ("October 4 Order"). The October 4 Order also confirmed that the Georgia Performance Plan and self-effectuating enforcement mechanisms approved by

the FCC be implemented temporarily in the interim between the issuance of the October 4 Order and December 1, 2002.

May 10, 2004 Authority Conference

At the Authority Conference held on May 10, 2004, Chairman Deborah Taylor Tate proposed that the Authority undertake an informal review of the performance measurements that were adopted in Docket No. 01-00193 as a part of the Settlement Agreement in Docket No. 97-00309. Chairman Tate noted that in that proceeding, the Authority, after December 1, 2003 and at its discretion, could conduct a review of the existing plan, solicit comments from interested parties, make any modifications that were deemed appropriate, and that the parties were free to recommend modifications. Thereafter, Chairman Tate solicited the parties to file comments regarding the conduct of a review of the existing Tennessee Performance Assurance Plan.

The Authority did not receive any comments from the parties about the existing performance measurements plan. Nevertheless, BellSouth, in filing its *Motion* on May 13, 2004, submitted a completely new performance measurements plan and suggested that a workshop be held to discuss that new plan. The Authority assigned a new docket number to BellSouth's *Motion* in keeping with the practice that new docket numbers be given to BellSouth revised Statement of Generally Available Terms filings.³

The Competitive Carriers of the South, Inc.⁴ ("CompSouth") filed a response to BellSouth's *Motion* on May 20, 2004. On June 3, 2004, BellSouth filed a *Motion to Close*

³ The Statement of Generally Available Terms ("SGAT") as accepted and approved in Docket 97-00309, sets forth the terms and conditions offered to comply with 47 U.S.C. § 251. The SGAT includes Performance Measurements, Benchmarks and Enforcement Mechanisms relating to the terms and conditions in the offering of Unbundled Network Elements.

⁴ The CompSouth members participating in the filing of the Response are Access Integrated Networks, Inc., Access Point Inc., MCI, Birch Telecom, Covad Communications Company, AT&T, NewSouth Communications Corp., Talk America, Nuvox Communications, Inc., ITC^DeltaCom, Xspedius Communications, Momentum Telecom, Inc., Network Telephone Corp., KMC Telecom, LecStar Telecom, Inc., Z-Tel Communications, Inc. and IDS Telecom LLC.

Docket stating that Docket No. 97-00309 would be the proper docket in which to consider the filing of its new performance assurance plan. BellSouth further stated:

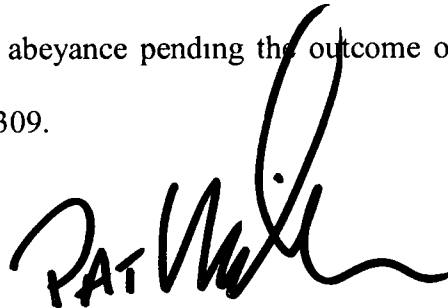
BellSouth believes that the best course is for all such review to occur within a single docket in order to avoid the potential for inconsistency, substantial duplication of efforts, and confusion.⁵

The June 7, 2004 Authority Conference

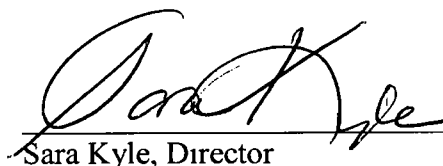
At a regularly scheduled Authority Conference held on June 7, 2004, after considering the comments of BellSouth and CompSouth and relying on action taken by the panel in Docket No. 97-00309, the panel voted unanimously to hold Docket No. 04-00150 in abeyance pending the outcome of the proposed workshop in TRA Docket No. 97-00309.

IT IS THEREFORE ORDERED THAT:

Docket No. 04-00150 shall be held in abeyance pending the outcome of the proposed workshop to be held in TRA Docket No. 97-00309.



Pat Miller, Director



Sara Kyle, Director



Ron Jones, Director

⁵ *Motion to Close Docket*, pp 1-2 (June 3, 2004)